

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24463 of 2019

Arising Out of PS. Case No.-182 Year-2016 Thana- WARISLIGANJ District- Nawada

AMARJEET KUMAR @ AMARJEET KUMAR VERMA S/o Surendra
Verma @ Surendra Prasad Resident of Village- Chiraiyan, P.S.- Nardiganj,
District- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Maheshwar Prasad

For the Opposite Party/s : Mr.Mukesh Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

- 4 19-06-2019 The petitioner, who is accused in Warisaliganj P.S.
Case No. 182 of 2016 for the offences punishable under
Sections 364,365 of the Indian Penal Code to which Sections
302, 201 and 120B of the Indian Penal Code were added has
been declared juvenile. He had applied for his release on bail
before the Juvenile Justice Board, Nawada, which was rejected
by an order dated 22.10.2016. An appeal preferred by him
against the order refusing his prayer for his release on bail under
Section 52 of the Juvenile Justice (Care and Protection of
Children) Act, 2015 (hereinafter referred to as 'the Act') too was
rejected by an order dated 04.01.2017, passed by the learned
Sessions Judge, Nawada. He had, thereafter preferred Criminal
Revision application under Section 53 of the Act before this



Court giving rise to Criminal Revision No. 405 o 2017, which was dismissed by an order dated 07.07.2017 with a direction to the Juvenile Justice Board to conclude the enquiry within a period of three months. The petitioner again filed a revision application registered as Criminal Revision No. 1191 of 2017 before this Court, renewing his prayer for bail, which was found to be not maintainable as there was no order under challenge and accordingly, it was allowed to be withdrawn by order dated 17.05.2018 with a liberty to approach the Juvenile Justice Board for his release, in case the matter had not been transferred to the Children's court or any other Court. He, thereafter, filed an application for regular bail before this Court under Sections 439 and 440 of the Code for his release on bail, giving rise to Cr. Misc. No. 43997 of 2018, which was also dismissed as not maintainable by order dated 12.09.2018.

2. This Court, noticing the provision under sub-section (5) of Section 101 of the Act recorded in the order dated 12.09.2018 that the petitioner had remedy of appeal under the said provision, which he could seek. It was accordingly observed that the petitioner's would be at liberty to prefer an appeal and for the said reason certified copies of the documents filed by him were directed to be returned to learned counsel for



he petitioner by the Registry, on demand. The order dated 12.09.2018 passed in Cr. Misc. No. 43997 of 2018 is being reproduced herein below:-

“This application has been filed seeking grant of regular bail on behalf of the petitioner, who is an accused of offences punishable under Sections 364, 365 to which Sections 302, 201, 120B of the Indian Penal Code have been subsequently added. The application arises out of Warsaliganj P.S. Case No. 182 of 2016.

The petitioner is a juvenile, whose case has been transferred to the Children’s Court for trial which has given rise to Children Case No. 38 of 2017. By order dated 14.06.2017, passed by the Juvenile Justice Board, Nawada, after recording the finding that the petitioner had mental and physical capacity to commit the offence and he had ability to understand the consequences of the offence has referred the case to the trial court. In my view, this application filed under Sections 439 and 440 of the Code of Criminal Procedure for grant of regular bail, is not maintainable.

Section 12 of the Juvenile



Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') is the only provision which deals with grant of bail to a person who is a juvenile. The order, which has been passed by learned Additional Sessions Judge, refusing to release the appellant on bail, is an order under the said Act.

The petitioner has remedy of appeal against order, passed by the Children's Court under Section 101(5) of the Act, which states that any person aggrieved by an order of Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

This application is, accordingly, dismissed as not maintainable.

It goes without saying that the petitioner shall be at liberty to prefer an appeal for the said purpose, the certified copy of the documents filed by the petitioner, shall be returned by the registry on demand."

3. The petitioner, thereafter filed Criminal Appeal



(SJ) No. 4095 of 2018, which was dismissed as withdrawn by an order dated 23.01.2019. The order reads thus:-

“Heard learned counsel for the appellant as well as learned Additional Public Prosecutor.

After some argument, learned counsel for the appellant seeks withdrawal of instant appeal and the same is allowed.

Accordingly, instant memo of appeal is dismissed as withdrawn.”

4. The petitioner, thereafter filed another application before the Children’s Court seeking regular bail which has been dismissed by an order 07.02.2019.

5. This application has, thereafter, been filed seeking regular bail under Sections 439 and 440 of the Code.

6. In my view, this application under Sections 438/439 of the Code cannot be maintained, in view of clear language of the provisions under Section 101(5) of the Act read with Section 15 and sub-section (3) of Section 18 of the Act. Section 15 of the Act confers upon the Board a duty to conduct a preliminary assessment in case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, with regard to his mental and physical



capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. After having undertaken the task of preliminary assessment, the Board has been authorized under Section 15 of the Act to pass an order in accordance with the provisions of sub-section (3) of Section 18 of the Act. Sub-Section (3) of Section 18 of the Act reads thus:-

“18. Orders regarding child found to be in conflict
with law.- (1) *** *****
(2) *** *****

(3) Where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.”

7. It is clear from the chain of events as noted above that before Criminal Revision No. 405 of 2017 (supra), was disposed of by an order dated 07.07.2017, whereby the Board was directed to conclude the enquiry, the preliminary assessment as conducted under Section 15 of the Act was already done and the Board had already ordered transfer of the trial of the case to the Children's Court. The matter is still pending for trial before the Children's Court.



8. The petitioner's application filed before the Children's Court for his release has been rejected which evidently grieves the petitioner. In my opinion, the petitioner has remedy of preferring an appeal against the order. I am unable to take a different view than what I have taken in the order dated 12.09.2018 passed in Cr. Misc. No. 43997 of 2018.

9. This application is dismissed as not maintainable.

9. The petitioner shall be at liberty to take recourse to appropriate provision of law as he may be advised.

(Chakradhari Sharan Singh, J)

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